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Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts

Note by the Secretariat

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I. Case Law on UNCITRAL Texts (CLOUT)

Background

1. CLOUT continues to be an important tool to promote the uniform interpretation and application of UNCITRAL texts, as it facilitates access to decisions and awards from many different jurisdictions. Furthermore, it contributes to the promotion of UNCITRAL legal texts since it demonstrates that the texts are being used and applied in many different countries and that judges and arbitrators at different latitudes are contributing to their interpretation. CLOUT also provides the basis for the analysis of interpretation trends that is a key part of the case law Digests. Background information on CLOUT and the Digests, is provided in the Provisional Agenda of the forty-seventh session of the Commission (A/CN.9/793, paras. 30 and 32-33).

2. At present, case law on the following texts is reported in the system:

- United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention);[1]
- Convention on the Limitation Period in the International Sale of Goods, 1974 and Convention on the Limitation Period in the International Sale of Goods as amended by the Protocol amending the Convention on the Limitation Period in the International Sale Of Goods, 1980 (Limitation Convention);
- United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules);
- United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG);
- UNCITRAL Model Law on International Credit Transfers, 1992 (MLICT);
- United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, 1995 (UNLOC);
- UNCITRAL Model Law on International Commercial Arbitration, 1985, as amended in 2006 (MAL);
- UNCITRAL Model Law on Electronic Commerce, 1996 (MLEC);
- UNCITRAL Model Law on Cross-Border Insolvency, 1997 (MLCBI);
- UNCITRAL Model Law on Electronic Signatures, 2001(MLES); and
- United Nations Convention on the Use of Electronic Communications in International Contracts, 2005 (ECC).

3. Case law to be reported in CLOUT is provided by the network of national correspondents that, either as individuals or a specific organ or body, monitor and

[1] The Commission may recall that at its forty-first session, in 2008, it agreed that, resources permitting, the Secretariat could collect and disseminate information on the judicial interpretation of the New York Convention. For this reason, the CLOUT system includes only recent case law concerning the Convention. See *Official Records of the General Assembly, Sixty-third session, Supplement No. 17* (A/63/17), para. 360.

collect court decisions and arbitral awards and prepare abstracts of those considered relevant in one of the six official languages of the United Nations. The Secretariat collects the full texts of the decisions and awards in their original language, but does not at present publish them. The abstracts are edited and translated by the Secretariat into the official United Nations languages and published in all such languages as part of the regular documentation of UNCITRAL (under the identifying symbol: A/CN.9/SER.C/ABSTRACTS/...).

4. While the national correspondents are the principal support of the system, in agreement with the correspondents, contributions from scholars who are not appointed as national correspondents are also accepted, subject to control and prior notification to the relevant national correspondent, if appointed. This practice is also consistent with the Commission's recommendation of utilizing all available sources of information to supplement the information provided by the national correspondents.[2] National correspondents meet every two years, when the Commission is in session in Vienna, to take stock of the latest developments and challenges of CLOUT maintenance and improvement.

Maintenance of the system

5. As at the date of this note, 143 issues of CLOUT had been prepared for publication, dealing with 1351 cases. Of these, 751 cases related to the CISG, 395 cases related to the MAL (a number of cases dealt with both MAL and the New York Convention), 89 cases related to the MLCBI, 73 cases primarily related to the New York Convention, 23 cases related to the MLEC, 13 cases related to the Limitation Convention (4 of which related to the amended version of the Convention), 3 cases related to the Hamburg Rules and 1 case each related to UNLOC, the ECC, the MLES and the MLICT. Case law concerning the MLES was published for the first time. As to the reference to the five regional groups represented within the Commission, the majority of the abstracts published are still attributable to Western European and other States (68 per cent, approximately). The other regional groups are represented as follows: Asian States (17 per cent, approximately), Eastern European States (9 per cent, approximately), Latin American and Caribbean States (3 per cent, approximately) and African States (2 per cent, approximately). A few abstracts (1 per cent, approximately) pertain to the awards of the International Chamber of Commerce (ICC). There are no significant changes in the figures when compared with those provided in last year's note to the Commission.

6. Since the last note to the Commission (A/CN.9/777), 111 new abstracts were received. Most of them were prepared by national or voluntary contributors, in a few cases the abstracts had been prepared by the Secretariat with no external input. The breakdown of the abstracts is as follows: 38 concern the MAL, 27 concern the New York Convention, 24 the CISG, 18 the MLCBI and 1 each the Limitation Convention (amended text) and the MLES. Two abstracts concern cases making reference to the UNCITRAL Legislative Guide on Insolvency Law. The court decisions and the arbitral awards to which the abstracts refer were issued in the following countries: Australia, Canada, China, Egypt, El Salvador, France, India,

[2] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), para. 372.

Iraq, Israel, Japan, Lithuania, Nigeria, Poland, Russian Federation, Spain, United Kingdom of Great Britain and Northern Ireland and the United States of America. The majority of the abstracts are from Western European and other States (49 per cent) followed by Eastern European States (40 per cent), Asia (4 per cent) Latin American and Caribbean States (4 per cent) and Africa (3 per cent). In the same period, 117 abstracts were published: 28 MLCBI, 31 MAL, 26 CISG, 23 New York Convention, 7 MLEC, and 1 each for the Limitation Convention (amended text) and MLES.

The network of national correspondents

7. No new national correspondents were appointed in the period under review. The composition of the network has thus remained unchanged: 64 correspondents representing 31 countries.[3] The Commission may wish to inform States that appointments can still be made: they will be effective as at 25th June 2012 and will expire five years thereafter.

8. Since the last note to the Commission (A/CN.9/777), national correspondents have provided approximately 68 per cent of the abstracts published. The remaining abstracts were received from voluntary contributors or prepared by the Secretariat.

Meeting of the national correspondents

9. The last meeting of national correspondents took place on 25 July 2013, during the forty-sixth session of the Commission. Twenty five countries were represented, in some cases national delegates attending the Commission and representatives of the Permanent Missions to the United Nations Organizations in Vienna participated on behalf of the national correspondent(s) of their country. CLOUT initiatives and challenges of the previous biennium were reviewed, with a particular focus on the UNCITRAL Digests. The approach to be followed in the next round of updating of the CISG Digest (due to start in 2014) was discussed, and information on the updating of the MAL Digest and on the progress in the preparation of the MLCBI Digest was provided. The Secretariat noted that this latter Digest will be largely based on cases from the United States, which comprise over 75 per cent of the cases on the MLCBI. The MLCBI Digest will complement The Judicial Perspective on the Model Law, which was revised in 2013 to include cases decided since the text was adopted by the Commission in 2011 and is more selective as to the cases referred to and the manner in which they are presented, since the purpose of the Judicial Perspective is to illustrate issues arising from the cases and means of possible interpretation of the Model Law (whilst preserving neutrality).

10. The Secretariat delivered a presentation of the website www.newyorkconvention1958.org developed by Mr. G. Bermann (Columbia University School of Law) and Mr. E. Gaillard (Sciences Po, École de Droit) in

[3] The following countries have appointed national correspondents: Australia, Austria, Bulgaria, Canada, China, Colombia, Cuba, Czech Republic, Denmark, El Salvador, Finland, France, Germany, Greece, Guatemala, Ireland, Israel, Italy, Luxembourg, Moldova, Montenegro, New Zealand, Poland, Republic of Korea, Russian Federation, Singapore, Spain, Sweden, Tunisia, United States of America, Uruguay.

collaboration with the Secretariat.[4] It was emphasized that the purpose of the website was to make the information gathered in preparation of the guide on the New York Convention publicly available, thus promoting the uniform and effective application of the Convention, and it was ensured that close coordination between the website and the CLOUT system would be maintained. The planned upgrading of the CLOUT website was also presented in detail, the new set-up would result in more user-friendly features and should allow users to obtain basic information of relevant case law before an abstract is published and to obtain the full text (in the original language) of the decisions published.

II. The Digests

11. The third revision of the CISG Digest (published in English in 2012) has been made available on the UNCITRAL website in Arabic, Chinese, English, Russian and Spanish. The French translation is currently being finalized. Resource constraints in the United Nations Office in Vienna made completion of the translations in all the official United Nations languages by the end of 2013 not possible. Work to update the current version of the MAL Digest is ongoing and finalization of the MLCBI Digest is progressing.

12. The UNCITRAL Secretariat has continued to promote both the MAL and the CISG Digests, which have been referenced in scholars' articles and publications.

III. Enhancing CLOUT

13. As reported in the last note to the Commission (A/CN.9/777), the Secretariat had identified internal budget resources to enhance the current features of the CLOUT web pages. The updating of the website had been scheduled to take place between the fourth quarter of 2013 and the first quarter of 2014 given the workload of the IT services of the United Nations Office in Vienna. The Secretariat having secured funds to establish the Transparency Registry (under the UNCITRAL Rules on Transparency),[5] however, the implementation of the two projects overlapped and resulted in conflicting priorities. The Commission may wish to recall that, in accordance with a decision at its forty-sixth session, in 2013, the set-up of the Transparency Registry was time-bound, therefore, the CLOUT overhaul was postponed until after the Registry had been finalized. At the date of this note, work to upgrade the CLOUT database has resumed and it should be completed in due course.

14. No additional resources to maintain and advance CLOUT, other than those earmarked to improve its web pages, are available to the Secretariat, which, as in previous sessions of the Commission, reaffirms the need for assistance in kind (e.g. non-reimbursable loans of personnel) or through budget contributions from States and other donors. The Commission might thus wish to reiterate its appeal to

[4] See A/CN.9/777 paras. 15-16 and *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 137 and paras. 235 to 240.

[5] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 79-90.

Member States to provide active support to the Secretariat's search for appropriate funding sources at the national level so as to ensure enhanced performance of the system.

IV. Promotion of uniform interpretation of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention)

15. In the period under review, the website www.newyorkconvention1958.org has continued to increase the volume of case law published on the application of the New York Convention and to add information about the jurisdictions having adopted the Convention. The database currently includes 1060 summaries of cases, 977 original-language decisions and 112 English-language translations. Short briefing notes on 37 countries and a guide to various articles of the Convention supplemented by relevant jurisprudence are also available. In order to maintain a close connection between the website and the CLOUT system, the most relevant cases are published in both systems, which allows for such cases to be available in the six official languages of the United Nations.